



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Engineering and Professional Services Incorporated

File: B-228437

Date: November 3, 1987

DIGEST

Award of a negotiated contract to a higher-cost, technically superior offeror is not objectionable where award on that basis is consistent with the evaluation criteria.

DECISION

Engineering and Professional Services Incorporated (EPS) protests the award of a contract under request for proposals (RFP) DAAD05-87-R-6115 issued by the U.S. Army Aberdeen Proving Ground Support Activity.

We dismiss the protest.

EPS contends that the contract was not awarded in accordance with the provisions set forth in the RFP. It concludes that, based on the RFP provisions, award should be made to EPS because it was the lowest priced "acceptable" offeror under the solicitation. We do not agree that the relevant provisions of the solicitation support this conclusion.

Although EPS asserts that the "cost proposal should have been the determining factor in selecting the company for contract award," the language of the solicitation states quite clearly that this is not the case.

Subsection M.1.1, entitled "Basis for Award," states:

"Any award to be made will be based on the best overall proposal with appropriate consideration given to the major areas of technical and cost/price. To receive consideration for award, the proposal must be acceptable in meeting the Government's requirements in each area. The relative importance of each of the major areas is as follows in descending order of importance:

040464/134345

Technical (To include Field Monitor's Guide)

Cost/Price"

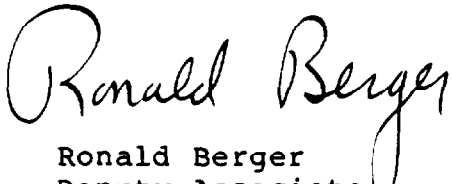
This provision contains essentially three ideas: first, technical acceptability and cost/price will be considered; second, the proposal must be technically acceptable; and third, technical qualifications are more important than cost/price in making the award. The mere fact that an offeror is technically acceptable, however, does not require award to the lowest priced offeror as EPS suggests. The second sentence of M.1.1 states that acceptability in both areas merely permits the awardee "to receive consideration for award." Actual award is to be based on technical factors and cost, with greater weight to be given to technical factors.

EPS also calls our attention to subsection L.140 of the solicitation which incorporates by reference Federal Acquisition Regulation provision found at 48 C.F.R. § 52.215-16 (1986). This provision provides no support for EPS' argument. Section (a) provides that "cost or price and other factors, specified elsewhere in this solicitation" will be considered. Subsection (b) provides expressly that the Government may "accept other than the lowest offer. . . ." The contracting officer therefore was clearly not required to select the lowest-priced offeror, but instead was to determine the awardee based on selection criteria that gave greater weight to technical factors than to cost. BARCO of Virginia, Inc., B-228375, Oct. 13, 1987, 87-2 C.P.D.

¶ _____.

EPS has also requested that a conference be held on the merits of its protest. However, no useful purpose would be served by holding such a conference where it is clear from the initial protest submission that the protest is without merit. American Hospital Supply, Equipping and Consulting, B-221357, Jan. 22, 1986, 86-1 C.P.D. ¶ 70.

Since there is no indication that the contracting officer did not make the award based on the evaluation criteria, the protest is dismissed.


Ronald Berger
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General Counsel